

AMENDED IN ASSEMBLY AUGUST 1, 2016

AMENDED IN ASSEMBLY JUNE 27, 2016

AMENDED IN SENATE MAY 31, 2016

AMENDED IN SENATE MARCH 31, 2016

SENATE BILL

No. 823

Introduced by Senator Block

January 6, 2016

An act to add Section 236.13 to the Penal Code, relating to human trafficking.

LEGISLATIVE COUNSEL'S DIGEST

SB 823, as amended, Block. Criminal procedure: human trafficking.

Existing law defines and proscribes the crimes of human trafficking, solicitation, and prostitution. Existing law provides that if a defendant has been convicted of solicitation or prostitution and has completed any term of probation for that conviction, the defendant may petition the court for relief if the defendant can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking. Existing law authorizes a court to issue an order that (1) sets forth a finding that the defendant was a victim of human trafficking, as specified, (2) dismisses the accusation or information against the defendant, or orders other relief, and (3) notifies the Department of Justice that the defendant was a victim of human trafficking when he or she committed the crime and the relief that has been ordered.

Existing law authorizes a person who was adjudicated a ward of the juvenile court for solicitation or prostitution to, upon reaching 18 years of age, petition the court to have his or her record sealed, as specified.

This bill would establish a separate petition process for a person who has been arrested for, convicted of, or adjudicated a ward of the juvenile court for, committing a nonviolent offense, as defined, while he or she was a victim of human trafficking. The bill would require the petitioner to establish that the arrest, conviction, or adjudication was the direct result of being a victim of human trafficking in order to obtain relief. The bill would require the petition for relief to be submitted under penalty of perjury, thereby expanding the scope of a crime. The bill would authorize the court, upon making specified findings, to vacate the conviction or adjudication and issue an order that provides the relief described above and also provides for the sealing and destruction of the petitioner's arrest and court records, as specified. The bill would require that the petition be made within a reasonable time after the person has ceased to be a victim of human trafficking, or within a reasonable time after the person has sought services for being a victim of human trafficking, whichever is later. The bill would provide that official documentation, as defined, of a petitioner's status as a victim of human trafficking may be introduced as evidence that his or her participation in the offense was the result of the petitioner's status as a victim of human trafficking. The bill would provide that a petitioner or his or her attorney is not required to appear in person at a hearing for the relief described above if the court finds a compelling reason why the petitioner cannot attend the hearing and may appear via alternate specified methods. The bill would prohibit the disclosure of the full name of a petitioner in the record of a proceeding related to his or her petition that is accessible by the public. The bill would authorize a petitioner who has obtained the relief described above to lawfully deny or refuse to acknowledge an arrest, conviction, or adjudication that is set aside pursuant to that relief. By expanding the scope of a crime and increasing the number of records local agencies would be required to seal and destroy, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 236.13 is added to the Penal Code, to
2 read:

3 236.13. (a) If a person was arrested for or convicted of any
4 nonviolent offense committed while he or she was a victim of
5 human trafficking, including, but not limited to, prostitution as
6 described in subdivision (b) of Section 647, the person may petition
7 the court for vacatur relief of his or her convictions and arrests
8 under this section.

9 ~~The section.~~ The petitioner shall establish, by clear and
10 convincing evidence, that the arrest or conviction was the direct
11 result of being a victim of human trafficking.

12 (b) The petition for relief shall be submitted under penalty of
13 perjury and shall describe all of the available grounds and evidence
14 that the petitioner was a victim of human trafficking and the arrest
15 or conviction of a nonviolent offense was the direct result of being
16 a victim of human trafficking.

17 (c) The petition for relief and supporting documentation shall
18 be served on the state or local prosecutorial agency that obtained
19 the conviction for which vacatur is sought or with jurisdiction over
20 charging decisions with regard to the arrest. The state or local
21 prosecutorial agency shall have 45 days from the date of receipt
22 of service to respond to the petition for relief.

23 (d) If opposition to the petition is not filed by the applicable
24 state or local prosecutorial agency, the court shall deem the petition
25 unopposed and may grant the petition.

26 (e) The court may, with the agreement of the petitioner and all
27 of the involved state or local prosecutorial agencies, consolidate
28 into one hearing a petition with multiple convictions from different
29 jurisdictions.

(f) If the petition is opposed or if the court otherwise deems it necessary, the court shall schedule a hearing on the petition. The hearing may consist of the following:

(1) Testimony by the petitioner, which may be required in support of the petition.

(2) Evidence and supporting documentation in support of the petition.

(3) Opposition evidence presented by any of the involved state or local prosecutorial agencies that obtained the conviction.

(g) After considering the totality of the evidence presented, the court may vacate the conviction and expunge the arrests and issue an order if it finds all of the following:

(1) That the petitioner was a victim of human trafficking at the time the nonviolent crime was committed.

(2) The commission of the crime was a direct result of being a victim of human trafficking.

(3) The victim is engaged in a good faith effort to distance himself or herself from the human trafficking scheme.

(4) It is in the best interest of the petitioner and in the interests of justice.

(h) In issuing an order of vacatur for the convictions, an order shall do the following:

(1) Set forth a finding that the petitioner was a victim of human trafficking when he or she committed the offense.

(2) Set aside the verdict of guilty or the adjudication and dismiss the accusation or information against the petitioner.

(3) Notify the Department of Justice that the petitioner was a victim of human trafficking when he or she committed the crime and of the relief that has been ordered.

(i) Notwithstanding this section, a petitioner shall not be relieved of any financial restitution order that directly benefits the victim of a nonviolent crime, unless it has already been paid.

(j) A person who was arrested as, or found to be, a person described in Section 602 of the Welfare and Institutions Code because he or she committed a nonviolent offense while he or she was a victim of human trafficking, including, but not limited to, prostitution, as described in subdivision (b) of Section 647, may petition the court for relief under this section. If the petitioner establishes that the arrest or adjudication was the direct result of being a victim of human trafficking the petitioner is entitled to a

1 *rebuttable* presumption that the requirements for relief have been
2 met.

3 (k) If the court issues an order as described in subdivision (a)
4 or ~~(b)~~, (j), the court shall also order the law enforcement agency
5 having jurisdiction over the offense, the Department of Justice,
6 and any law enforcement agency that arrested the petitioner or
7 participated in the arrest of the petitioner to seal their records of
8 the arrest and the court order to seal and destroy the records for
9 three years from the date of the arrest, or within one year after the
10 court order is granted, whichever occurs later, and thereafter to
11 destroy their records of the arrest and the court order to seal and
12 destroy those records. The court shall provide the petitioner a copy
13 of any court order concerning the destruction of the arrest records.

14 (l) A petition pursuant to this section shall be made and heard
15 within a reasonable time after the person has ceased to be a victim
16 of human trafficking, or within a reasonable time after the
17 petitioner has sought services for being a victim of human
18 trafficking, whichever occurs later, subject to reasonable concerns
19 for the safety of the petitioner, family members of the petitioner,
20 or other victims of human trafficking who may be jeopardized by
21 the bringing of the application or for other reasons consistent with
22 the purposes of this section.

23 (m) For the purposes of this section, official documentation of
24 a petitioner's status as a victim of human trafficking may be
25 introduced as evidence that his or her participation in the offense
26 was the result of his or her status as a victim of human trafficking.
27 For the purposes of this subdivision, "official documentation"
28 means any documentation issued by a federal, state, or local agency
29 that tends to show the petitioner's status as a victim of human
30 trafficking. Official documentation shall not be required for the
31 issuance of an order described in subdivision (a).

32 (n) A petitioner, or his or her attorney, may be excused from
33 appearing in person at a hearing for relief pursuant to this section
34 only if the court finds a compelling reason why the petitioner
35 cannot attend the hearing, in which case the petitioner may appear
36 telephonically, via videoconference, or by other electronic means
37 established by the court.

38 (o) Notwithstanding any other law, a petitioner who has obtained
39 an order pursuant to this section may lawfully deny or refuse to

1 acknowledge an arrest, conviction, or adjudication that is set aside
2 pursuant to the order.

3 (p) Notwithstanding any other law, the records of the arrest,
4 conviction, or adjudication shall not be distributed to any state
5 licensing board.

6 (q) The record of a proceeding related to a petition pursuant to
7 this section that is accessible by the public shall not disclose the
8 petitioner's full name.

9 (r) A court that grants relief pursuant to this section may take
10 additional action as appropriate under the circumstances to carry
11 out the purposes of this section.

12 (s) If the court denies the application because the evidence is
13 insufficient to establish grounds for vacatur, the denial ~~shall~~ *may*
14 be without prejudice. The court may state the reasons for its denial
15 in writing or on the record that is memorialized by transcription,
16 audio tape, or video tape, and if those reasons are based on curable
17 deficiencies in the application, allow the applicant a reasonable
18 time period to cure the deficiencies upon which the court based
19 the denial.

20 (t) For the purposes of this section, the following terms apply:

21 (1) "Nonviolent offense" means any offense not listed in
22 subdivision (c) of Section 667.5.

23 (2) "Vacate" means that the arrest and any adjudications or
24 convictions suffered by the petitioner are deemed not to have
25 occurred and that all records in the case are sealed and destroyed
26 pursuant to this section. The court shall provide the petitioner with
27 a copy of the orders described in subdivisions (a), ~~(b), and (c)~~, *(j)*,
28 *and (k)*, as applicable, and inform the petitioner that he or she may
29 thereafter state that he or she was not arrested for the charge, or
30 adjudicated or convicted of the charge, that was vacated.

31 (3) "Victim of human trafficking" means the victim of a crime
32 described in subdivisions (a), (b), and (c) of Section 236.1.

33 SEC. 2. No reimbursement is required by this act pursuant to
34 Section 6 of Article XIII B of the California Constitution for certain
35 costs that may be incurred by a local agency or school district
36 because, in that regard, this act creates a new crime or infraction,
37 eliminates a crime or infraction, or changes the penalty for a crime
38 or infraction, within the meaning of Section 17556 of the
39 Government Code, or changes the definition of a crime within the

1 meaning of Section 6 of Article XIII B of the California
2 Constitution.

3 However, if the Commission on State Mandates determines that
4 this act contains other costs mandated by the state, reimbursement
5 to local agencies and school districts for those costs shall be made
6 pursuant to Part 7 (commencing with Section 17500) of Division
7 4 of Title 2 of the Government Code.

8 SEC. 3. The Legislature finds and declares that Section 1 of
9 this act, which adds Section 236.13 to the Penal Code, imposes a
10 limitation on the public's right of access to the meetings of public
11 bodies or the writings of public officials and agencies within the
12 meaning of Section 3 of Article I of the California Constitution.
13 Pursuant to that constitutional provision, the Legislature makes
14 the following findings to demonstrate the interest protected by this
15 limitation and the need for protecting that interest:

16 In order to protect the privacy of victims of human trafficking
17 and to improve their opportunities for recovery, it is necessary that
18 this act limit the public's right of access to the full name of a
19 petitioner who seeks relief from an arrest or conviction for an
20 offense in which the petitioner participated as a result of his or her
21 status as a victim of human trafficking.